

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ALGONQUIN POWER INCOME FUND;
ALGONQUIN POWER CORPORATION, INC;
ALGONQUIN POWER U.S. HOLDINGS, INC.;
ALGONQUIN POWER FUND (CANADA), INC.;
and ALGONQUIN POWER SYSTEMS, INC.;

Adversary Defendants-Appellants,

-v-

6:07-CV-1258

CHRISTINE FALLS OF NEW YORK, INC.
and TRAFALGAR POWER INC.,

Adversary Plaintiffs-Appellees.

APPEARANCES:

OF COUNSEL:

MENTER RUDIN & TRIVELPIECE
Attorneys for Algonquin Power Parties
308 Maltbie Street Suite 200
Syracuse, New York 13204-1498

JEFFREY A. DOVE, ESQ.
JAMES C. THOMAN, ESQ.

HARRIS BEACH PLLC
Attorneys for Trafalgar Power Parties
99 Garnsey Road
Pittsford, New York 14534

PAUL J. YESAWICH, III, ESQ.
LAURA W. SMALLEY, ESQ.

HARRIS BEACH PLLC
Attorneys for Trafalgar Power Parties
300 South State Street
Syracuse, New York 13202

DAVID M. CAPRIOTTI, ESQ.

DAVID N. HURD
United States District Judge

MEMORANDUM-DECISION and ORDER

I. INTRODUCTION

On January 20, 2010, the United States Court of Appeals for the Second Circuit issued a decision vacating and remanding this matter. Algonquin Power Income Fund v.

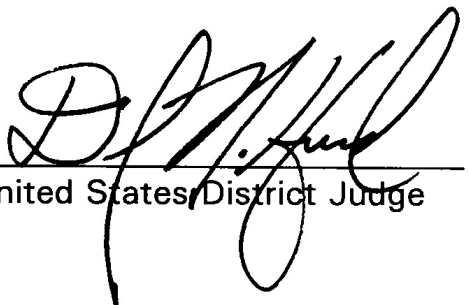
Christine Falls of N.Y., Inc., No. 08-6026, 2010 WL 177244 (2d Cir. Jan. 20, 2010) (summary order), vacating & remanding 396 B.R. 106 (N.D.N.Y. Nov. 7, 2008). The Court of Appeals found that it was erroneous to apply the doctrine of collateral estoppel with regard to claims which the Algonquin entities listed in the caption (collectively "Algonquin") made against the proceeds of an engineering malpractice judgment ("malpractice judgment") received by Christine Falls of New York, Inc. and Trafalgar Power, Inc., debtors in bankruptcy (collectively "Trafalgar"). Id. at *5. Rather, the Court of Appeals directed that the merits of Algonquin's claim of a security interest in the malpractice judgment proceeds held by Trafalgar be considered. Id.

The Mandate issued on March 16, 2010, and was filed in the Northern District of New York on March 23, 2010. In accordance with the directive of the Second Circuit, the Judgment entered on November 6, 2008, will be vacated. Decision after consideration of the merits as directed by the Court of Appeals is reserved.

Accordingly it is

ORDERED that the judgment entered on November 6, 2008, is VACATED.

IT IS SO ORDERED.



United States District Judge

Dated: March 30, 2010
Utica, New York.